



Las Vegas Office
1743 N Grand Ave, Las Vegas, NM 87701
(505) 652-3169 | SingletonSchreiber.com

January 9, 2024

Via Email

Re: FEMA's Lack of Accountability

Dear New Mexico Elected Officials and Leaders,

Throughout the past year, it has become increasingly evident that the FEMA Hermit's Peak/Calf Canyon Claims Office ("Claims Office"), which is charged with administering claims for victims under the Hermit's Peak/Calf Canyon Fire Assistance Act ("the Act"), has failed in its mission to administer the \$3.95 billion appropriated by Congress under the Act.

FEMA has failed to hire qualified individuals to serve as the claims reviewers, failed to properly train and supervise the individuals who have been hired, failed to hire qualified subject matter experts to evaluate the claims submitted by victims, and failed to put an organized, coherent system for reviewing claims in place.

As a result, two things have happened: (1) victims are not being paid within the statutorily required time period, and (2) FEMA continues to provide victims (and their attorneys) with inaccurate and often contradictory information when questions are raised.

One of the most egregious examples involves the Claims Office's failure to hire tree experts, or arborists, which are the experts needed to evaluate tree claims. Since the period for public comment opened in October 2022, it has been apparent to everyone that one of the main categories of losses would be for tree damages

Incredibly, however, on October 25, 2023, a claims reviewer told our office in writing that FEMA was "still putting together a team of experts to review and quantify the Arborist plans" and thus, were unable to evaluate the claimant's proof of loss. (See email from Claims Reviewer Doug Parden, dated October 25, 2023, attached as Exhibit 1).

This is not a typo.

On October 25, 2023, nearly 13 months after the bill was passed in September 2022 and **10 months after the Claims Office opened in January 2023, FEMA still had not hired the main type of experts required to evaluate claimants' losses.**

As a result of its failure to hire competent evaluators and experts, FEMA has failed to comply with the 180-day requirement set forth in the text of the Act.

For example, last month our office inquired as to the status of one of our client's claims after the 180-day deadline for which the Claims Office had to submit an offer of compensation.

Two days later, a claims reviewer requested more documentation and then, just days ago (and more than two weeks past the 180-day deadline), we were notified that a claims reviewer

initiated a request for a 60-day extension on behalf of our client without authorization. (See January 3, 2024 letter (redacted), attached as Exhibit 2).

Our office never requested an extension, nor did we authorize the Claims Office to initiate an extension request on our client's behalf.

In responses to the media, the Claims Office has also stated that "it has identified a flaw in its reporting system that affected timeline management of some cases." Rather than actually fixing the issues, the Claims Office has made it its practice to articulate excuses in order to justify its incompetence and in some cases, blatantly inappropriate behavior.

The problem with that excuse, however, is that it ignores the fact that this is not just happening in certain cases. Of the 116 cases we have submitted, the Claims Office has complied with the 180-day deadline in only three. Thus, **in 113 out of 116 cases, 97%, FEMA has failed to comply with the law.**

To make matters worse, in an apparent attempt to make it seem as if it is doing its job, Claims Office Director Gladwell has deliberately presented misleading information to the public.

For example, in response to complaints from victims about delayed payments, Director Gladwell told the press that "73% of claims" have been paid by FEMA.

This is simply false. The Coalition for Fire Fund Fairness ("CFFF") – an organization formed to advocate for fair treatment of victims by FEMA – canvassed its members and determined that "of 178 claimants who have filed paperwork through their legal counsel, only three have been considered for payment. This amounts to approximately 1.7% of claims filed by legal counsel." (See "Opinion: FEMA bureaucrats are failing northern NM wildfire victims," written by Manny Crespin, Jr., Founder of CFFF, December 31, 2023, at <https://geraldsingleton.sharefile.com/d-sac0165e706fa4fcd4c9b22241cc3eao>.)

As a result of FEMA's failure to comply with the Act, we have been forced to file several lawsuits in federal court.

The first lawsuit filed seeks the court to set aside the portion of FEMA's Final Rule that unlawfully denies victims compensations for noneconomic damages, to which they are entitled under the Act. The Act explicitly provides that the laws of New Mexico shall apply to the calculation of damages and New Mexico law provides for noneconomic damages for interference with personal comfort, annoyance, and inconvenience. Despite this explicit provision of the Act, FEMA's Final Rule categorically denies compensation for any noneconomic damages. (See *Dolan v. FEMA* (Declaratory Judgement re Noneconomic Damages) at <https://geraldsingleton.sharefile.com/d-sac0165e706fa4fcd4c9b22241cc3eao>.)

This issue has great ramifications. As articulated in the recent article by Patrick Lohmann and Byard Duncan, which has been published in *Source New Mexico* and *ProPublica*, if compensation was limited to only tangible expenses, such as destroyed property, lost business, and medical expenses, many the victims of the fire would be left with little to no settlement

funds, which would leave them with little to no chance of moving on with their lives. (See “In the scar of New Mexico’s largest wildfire, a legal battle is brewing over the cost of suffering,” written by Patrick Lohmann and Byard Duncan, *Source New Mexico/ProPublica*, January 2, 2024 at <https://geraldsingleton.sharefile.com/d-saco165e706fa4fcda4c9b22241cc3eao>).

The article points out that this is especially true for renters and those who live on familial lands, as they do not own the homes or property and/or cannot provide the proof FEMA is requiring in order to be compensated. Additionally, this limitation on compensation would have a devastating impact on low-income victims, who have not accumulated many possessions, but instead place value in their ancestral lands and hold those as their most prized assets. For these victims, the value of their noneconomic damages far exceeds that of their tangible possessions.

A prime example of this impact was illuminated in the article. Six years ago, Meg Sandoval moved to her family’s ranch in Rociada, New Mexico – land that they have had since the 1840’s – to take care of her elderly parents. Living in her family’s home on the ranch, along with her Social Security checks was Ms. Sandoval’s retirement plan. Because it was her family’s home, Ms. Sandoval and her parents did not execute a lease, nor did they formalize the living arrangement with paperwork of any kind. She has few possessions to her name and expected to live comfortably on her family’s land for the rest of her life. After the fire destroyed her family’s home and Ms. Sandoval’s possessions, she was forced to live in Colorado for more than a year. Now, due to the fact that Ms. Sandoval does not have a formal transfer of the deed to the home or other paperwork FEMA requires, coupled with FEMA’s refusal to pay for noneconomic damages, Ms. Sandoval only expects to receive a few thousand dollars from FEMA for her possessions and relocating costs. Sadly, this situation is common for many of the victims in northern New Mexico, as there never has been an incentive or need to formalize the transference of family lands.

Unfortunately, failing to pay non-economic damages is not the only instance in which FEMA has failed to follow the law.

Despite the express language of the Act – which mandates that FEMA determine and fix the amount of a claim no later than 180 days after the claim is submitted – FEMA has repeatedly failed to pay claims within this 180-day period. This is particularly galling in light of the fact that while the Act states that FEMA must make offers within 180 days of a claim being submitted, FEMA has taken the position that this 180 days does not start until FEMA officially “acknowledges” the claim. Thus, when FEMA fails to comply with this 180-day deadline (as it has in dozens of our clients’ cases), the actual period of time that has elapsed since the claimant submitted their claim is often 270-300 days, not the 180 days set forth in the Act.

Accordingly, we have filed a declaratory relief action requesting that the federal court order FEMA to comply with the plain language of the Act and make an offer within the 180-day period set forth in the Act. (See *Montoya, et al. v. FEMA, et al.* at <https://geraldsingleton.sharefile.com/d-saco165e706fa4fcda4c9b22241cc3eao>.)

It is time to recognize that Gladwell and the Claims Office have failed miserably and that your constituents have been suffering – and will continue to suffer – because of it. New Mexicans deserve better.

The only solution is for FEMA to follow the example of the federal bankruptcy court in the 2019 Pacific Gas & Electric bankruptcy and to appoint a retired New Mexico judge or appellate justice to serve as the administrator of the \$3.95 billion fund set up by the Act. This retired judge can then hire the administrators and experts necessary to provide prompt, fair payments to the victims.

Sincerely,



Brian Colon, Esq.

Encl: Exhibits 1 and 2

EXHIBITS

EXHIBIT 1

Subject: FW:

From: Parden, Douglas (CTR) <douglas.parden@associates.fema.dhs.gov>

Sent: Wednesday, October 25, 2023 8:44 AM

To: Martha Ponce <mponce@singletonschreiber.com>

Subject: RE:

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Martha,

FEMA is still putting together a team of experts to review and quantify the Arborist plans submitted. We were advised it may be another 2 months before the review panel is in place. If you choose to, we could revise the POL without the Arborist plan, you could send a second POL for just the Arborist Plan. This would allow me to process a partial POL for the other items listed and once the FEMA panel reviews and approves the Arborist plan, we can then process the Arborist plan POL. It's up to you if you'd like to revise as outlined, if not, we'll have to wait for the Arborist report approval to process the current POL.

Thank you,

Doug Parden

Claims Review - Contractor | Hermit's Peak/Calf Canyon Fire Claims Office

Santa Fe, New Mexico

[Hermit's Peak/Calf Canyon Fire | FEMA.gov](#)

Mobile: (202)834-9796

douglas.parden@associates.fema.dhs.gov



FEMA

From: Martha Ponce <mponce@singletonschreiber.com>

Sent: Tuesday, October 24, 2023 8:21 AM

To: Parden, Douglas (CTR) <douglas.parden@associates.fema.dhs.gov>

Subject:

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Please select the Phish Alert Report button on the top right of your screen to report this email if it is unsolicited or suspicious in nature.

Good morning Douglas,

I am reaching out to get an update on the POL for
submitted 08/14/2023.

. His POL was

Best,



Martha Ponce

Singleton Schreiber | Case Assistant

mponce@singletonschreiber.com | (619) 837-7833

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San Diego, CA 92108



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EXHIBIT 2

January 3, 2024

Via Email

Ms. Angela Gladwell
Director, Hermit's Peak/Calf Canyon Claims Office
P.O. Box 1329
Santa Fe, NM 87504
Fema-hermits-peak@fema.dhs.gov

Re: Unauthorized Claim Extension Request – [REDACTED]

Dear Director Gladwell,

It has come to our attention that a claims reviewer from your office has initiated a claim extension request on behalf of one of our clients without authorization.

On December 19, 2023, (*one day after* the 180-day deadline for our client [REDACTED] our office emailed FEMA claims reviewer Sanae Armstrong and requested a status update on [REDACTED] claim.

After receiving no response, we contacted Ms. Armstrong on December 21 (*three days after* the 180-day deadline) via telephone and email, once again requesting a status update on [REDACTED] claim. In this December 21 email, we indicated that we had not received any updates on the claim or requests for additional documentation.

On December 21, 2023, Ms. Armstrong responded to us by email, stating that we needed to provide a copy of [REDACTED] insurance estimate and indicated that someone from the field office would be contacting our office to schedule an inspection of [REDACTED] location. Our office responded, indicating that we would work on obtaining the requested documents and would coordinate for the inspection.

Ms. Armstrong did not address the fact that FEMA was in violation of the 180-day requirement set forth in the Hermit's Peak/Calf Canyon Fire Assistance Act (the "Act").

On January 2, 2024, our office received an email from Ms. Armstrong in which she informed us that she had initiated a 60-day extension request for [REDACTED] claim.

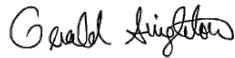
Our office never requested an extension, nor did we authorize Ms. Armstrong to initiate an extension request on [REDACTED] behalf.

This extension request is invalid and this unilateral action involving one of our clients is unacceptable and will not be tolerated.

Under the plain language of the Act, FEMA was legally required to provide [REDACTED] with a written offer by December 18, 2024. It is now January 3, more than two weeks past the deadline.

If we have not received a written offer for [REDACTED] by Friday, January 5, 2024, we will initiate a suit against FEMA demanding compliance with the Act and seeking sanctions against you and Ms. Armstrong for your continued refusal to comply with the Act's requirements.

Sincerely,



Gerald Singleton, Esq.
Managing Partner



Brian S. Colón, Esq.
Managing Partner – New
Mexico